SUPREME COURT OF THE UNITED STATES.

No. 401.

LOUIS STUTZ, PLAINTIFF IN ERROR,

VS.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print.
Indictment	1	1
Defendant arraigned	3	2
Cause set for trial	4	2
Continued	4	2
Motion for change of venue	5	3
Motion for change of venue overruled	6	3
Motion to set aside indictment	7	4
Leave given to withdraw plea, &c.	8	4
Motion to set aside panel of petit jury	8	4
Hearing of cause	10	5
Motion in arrest and for new trial	11	6
Judgment	14	7
Bill of exceptions	15	7
Motion for change of venue	17	8
Motion for change of venue overruled	18	8
Laird's testimony	21	10
Facts proved	23	10
Challenge disallowed	27	12
Noell's testimony	27	12
Jack's testimony	28	12
Morris and Fink's testimony	29	13
License	30	14
Instructions asked	32	14
Instructions refused	33	15
Motion in arrest	34	15
Notice of appeal	37	16
Clerk's certificate	39	17
Submission of case to supreme court	39½	17

	Original.	Print
Judgment of supreme court	40	18
Certificate of clerk supreme court	42	19
Writ of error	43	19
Certificate of chief justice	45	20
Certificate of clerk supreme court	47	20

1 Pleas and proceedings before the Hon. John H. Gray, judge of the 5th judicial district, Iowa, at a term of the district court of Polk county, begun and held at Des Moines, on the day of July, A. D. 1864.

THE STATE OF IOWA }
vs.
LOUIS STUTZ. }

Be it remembered that heretofore, to wit, on the 4th day of February, 1864, a true bill of indictment was returned by the grand jury to the district court of Polk county, and filed by the clerk of said court on the same day, which indictment is in words and figures following, to wit:

Indictment for keeping a nuisance.

In the district court of the county of Polk, State of Iowa.

THE STATE OF IOWA }
against
LOUIS STUTZ. }

The grand jurors of the county of Polk, in the State of Iowa, being duly and legally impanelled, sworn, and charged, in the name and by the authority of the State of Iowa, do accuse Louis Stutz of the crime of keeping a common nuisance, committed as follows:

The said Louis Stutz, on the first day of August, in the year of our Lord one thousand eight hundred and sixty-three, and on
2 divers other days and times between that day and the finding of this indictment, in the city of Des Moines, in the county of Polk, and State of Iowa, unlawfully did keep and use a certain building known as Stringham's block, situated on Walnut street, in the city of Des Moines, in the county of Polk, and State of Iowa, for the purpose of keeping in said building intoxicating liquors to sell in violation of law, and in the said building so kept and used as aforesaid, the said Louis Stutz, on the said first day of August, in the year of our Lord one thousand eight hundred and sixty-three, and on divers other days and times, unlawfully did own and keep and was engaged in keeping intoxicating liquors, with intent then and there to sell said intoxicating liquors in violation of law, to the great damage and common nuisance of all the good people of the State of Iowa, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the State of Iowa.

B. F. MURRAY,
District Attorney of the 5th Judicial District.

The within indictment was presented in open court by the
3 foreman of the grand jury in the presence of the whole grand jury, and filed by the clerk of the court, this 4th day of February, A. D. 1864.

J. M. LAIRD,
Clerk of the District Court of Polk County, Iowa.

I hereby order a bench warrant to issue forthwith on the within indictment for the arrest of the within-named defendant, and his bail is placed and fixed at one hundred dollars.

J. H. GRAY,
Judge of the 6th Judicial District, Iowa.

Indorsed: A true bill.

R. T. CHRISTY,
Foreman of the Grand Jury.

Names of witnesses examined before the grand jury: Jacob Fink, John Morris, Samnel Noel, W. W. Moore, A. M. Newton, John Jack, jr.

And afterwards, to wit, on the 8th day of February, 1864, being the 13th day of the January term, 1864, of the district court, the following was entered on the records of said court, to wit:

STATE OF IOWA
vs.
LOUIS STUTZ. } No. 71. Criminal.

4 In this cause defendant appearing to the indictment, was duly arraigned, on this 8th day of February, A. D. 1864, and stated that he was indicted by his true name; whereupon leave is granted by the court until to-morrow morning to plead.

And afterwards, to wit, on the 16th day of said January term, the following was entered of record, to wit:

THE STATE OF IOWA
vs.
LOUIS STUTZ. } No. 71. Criminal.

This cause is set for hearing on Tuesday, the 20th day of this term. Each and every of the defendants above named now come and enter a plea of "not guilty," subject to the right to withdraw the plea and attack the indictments in case the same should appear to defendant's counsel to be defective.

Feb'y 11th, 1864.

FINCH & ELLWOOD, *for Def'ts.*

And afterwards, to wit, on the 23d day of said term, the following was entered of record, to wit:

STATE OF IOWA
vs.
LOUIS STUTZ. } No. 71. Criminal.

This cause is continued at defendant's costs.

5 And afterwards, to wit, on the 12th day of July, 1864, being the 2d day of the July term, 1864, of the district court, the following was entered of record, to wit:

STATE OF IOWA
vs.
LOUIS STUTZ. } No. 71. Criminal.

Now come Ellwood, Finch, Clark, and Rice, and file motion for a change of venue.

Which motion for a change of venue is in words and figures following, to wit:

District court.

THE STATE OF IOWA
vs.
LOUIS STUTZ.

To the district court of Polk county, Iowa:

The petitioner, Louis Stutz, respectfully shows to this court that he is the defendant in the above-entitled action; that this prosecution is instituted against your petitioner, and he is indicted herein for the criminal offence of keeping a common nuisance; that the indictment against this petitioner for said offence was found by the grand jury of said Polk county, and the said indictment and this action is now pending in the district court of said county; that as he verily believes the judge of the fifth judicial district is prejudiced against him, and that owing to the prejudice of said judge of the said fifth judicial district, your petitioner cannot receive a fair and impartial trial in said county of Polk, or in the fifth judicial district. Your petitioner, therefore, prays that the venue of this action may be changed from the fifth judicial district as authorized by the statutes of this State in such cases made and provided; and your petitioner further shows that similar objections exist to the judge of the eleventh judicial district.

6

LOUIS STUTZ.

STATE OF IOWA, *Polk County:*

I, Louis Stutz, being duly sworn, do state that the foregoing petition is true as I verily believe.

LOUIS STUTZ.

Subscribed and sworn to before me by Louis Stutz, this 15th day of Feb'y, 1864.

GEO. W. CLARK,
Notary Public, Polk County, Iowa.

And afterwards, to wit, on the 3d day of said July term, the following was entered of record, to wit:

STATE OF IOWA
vs.
LOUIS STUTZ. } No. 71. Criminal.

7 This cause coming on to be heard on the motion heretofore filed for a change of venue, is by the court overruled, to which ruling of the court the defendant excepts.

And afterwards, to wit, on the 18th day of July, 1864, a motion to set aside indictment herein was filed in words and figures following, to wit:

In the district court of Polk county, Iowa.

STATE OF IOWA, POLK COUNTY,
vs.
STUTZ.

Now comes the defendant, Stutz, and moves the court to set aside the indictment in the above-entitled cause, for the following reasons, to wit:

First. Because the panel of the grand jury for the January term of this court for 1864, at which said indictment was found, was not a legal grand jury, and was not appointed as prescribed by law.

Second. Said panel was not drawn as required by statute.

Third. Said panel was not summoned as the statute requires.

And we refer to the records to sustain this motion.

ELLWOOD, and FINCH C. & RICE,
Att'ys for Def't.

8 And afterwards, to wit, on the 7th day of the said July term, the following was entered of record, to wit:

STATE OF IOWA
vs.
LOUIS STUTZ. } No. 71. Criminal.

In this cause leave is given to withdraw plea and file motion to set aside the indictment.

And afterwards, to wit, on the 8th day of the said July term, 1864, the following was entered of record, to wit:

STATE OF IOWA
vs.
LOUIS STUTZ. } No. 71. Criminal.

Now comes Finch & Ellwood, attorneys for defendant, and file motion to set aside panel of the petit jury, which is overruled by the court, to the ruling of which the defendant excepts.

Which motion and challenge is in words and figures following, to wit:

District court, Polk county, Iowa, July term, 1864.

STATE OF IOWA
vs.
LOUIS STUTZ.

Now comes the defendant and challenges the panel of petit or trial jurors, impanelled to try the issues of this term of the

court, and moves to set aside the said panel for the following reasons, and upon the following grounds:

First. The jurors composing said panel were not selected, drawn, or summoned in the manner prescribed by the laws of this State.

Second. The clerk, in selecting said jury, did not apportion the number to be selected from the different townships of the county, as provided and required by sec. 2,725 of the revision, nor deliver a statement thereof to the sheriff, as by said section required.

Third. The sheriff of the county did not cause the written notice to be delivered to one of the judges of election, in the several townships, informing them of the number of jurors appointed to their respective townships, as required by sec. 2,726 of the revision.

Fourth. The judges of the election, in the different townships of the county, did not make the selection and return list of names to the county judge with the returns of election as required by section 2,727 of the revision, nor, on their failure to make and return such lists, did the county canvassers, at the meeting to canvass the votes polled in said county, make such lists as provided by said sec. 2,727.

Fifth. The said jurors, composing said panel, were not drawn and summoned as provided and required by sections 2,730, '31, '32, '34 of the revision.

Sixth. None of the material requisites prescribed by chapter 115 of the revision of 1860, for the selection, drawing, and summoning of the said jurors, were observed or regarded in the selection, drawing, and summoning and return of said jury.

FINCH & ELLWOOD,
Att'ys for Def't.

And afterwards, to wit, on the same (8th) day, the following was entered of record, to wit:

STATE OF IOWA
vs.
LOUIS STUTZ. } No. 71. Criminal.

This cause now coming on for hearing, the State appeared by Sibley & Murray, and the defendant by Finch & Ellwood, and thereupon came a jury, to wit: Harrison Lyon, G. W. Barngrover, Henry Meyerhoff, Theodore Carpenter, S. C. Brownell, Geo. Bogenwright, J. O. Doolittle, W. F. Ayers, N. A. Knoup, S. H. Reynolds, D. H. Young, and L. D. Sims, and after hearing the testimony in the case, and the argument of counsel, and receiving the instructions of the court, retired in charge of a sworn bailiff to consider of their virdict; and after a short time they returned into court with the following verdict:

We, the jury, find the defendant guilty as charged in the indictment.

And now come Finch and Ellwood, attorneys for defendant, and give notice of the filing a motion in arrest of judgment and for a new trial.

And afterwards, to wit, on the 20th day of July, 1864, being the 9th day of the July term of said court, a motion in arrest of judgment and for a new trial was filed herein in words and figures following, to wit:

District court, Polk county, July term, 1864.

THE STATE OF IOWA
vs.
LOUIS STUTZ.

Now comes the defendant herein, and moves the court in arrest of judgment and for a new trial in this action, on the following grounds:

First. The court erred in refusing to allow the defendant to make his motion to set aside the indictment, his answer having been
12 filed, subject to and reserving such right.

Second. The court erred in overruling defendant's motion for a change of venue.

Third. The court erred in overruling and deciding against the defendant, his challenge to the panel of petit or trial jurors, and disallowing the same.

Fourth. The court erred in refusing to give the instructions asked by the defendant, touching the unconstitutionality of the law under which the defendant is indicted and tried.

Fifth. The law under which defendant is indicted and convicted is at variance and in conflict with the Constitution of the United States, or several provisions thereof.

Sixth. The State law under which defendant herein is indicted and convicted being in conflict with the provisions of the Constitution of the United States and the laws thereof, is void.

Seventh. The State law prohibiting the sale of intoxicating liquors and declaring such liquors a nuisance, the defendant holding a license to sell the same from the government of the United States, is in conflict with the Constitution of the United States and the laws thereof authorizing the importation and sale of liquors, and
13 therefore void.

Eighth. The State law prohibiting the sale of intoxicating liquors, and declaring the same a nuisance, and authorizing its destruction, is in conflict with section 2, art. 4, of the Constitution of the United States, and in conflict with the second clause or paragraph of art. 6 of the Constitution of the United States, and in conflict with that part of art. 5, amendments to the Constitution, contained in the two last paragraphs of said article, and in conflict with the provisions of the Constitution and laws of the United States which recognize intoxicating liquors as property, and authorize the importation and sale thereof.

Ninth. The "act for the suppression of intemperance," passed by the legislature of this State, and under which the indictment herein was found, so far as it declares liquors kept with intent to sell the same a nuisance, and authorize the seizure and destruction thereof, whether domestic or imported liquors, is void, being in conflict with

the provisions of the Constitution of the United States and
14 the laws thereof, which authorize the importation and sale of intoxicating liquors, and grants licenses for the sale thereof; and also being in conflict with that portion of art. 5, amendments to the Constitution of the United States, which prohibits the taking of private property for public use without just compensation.

FINCH & ELLWOOD,
Att'ys for Def't.

And afterwards, to wit, on the 28th day of said July term, 1864, the following was entered of record, to wit:

THE STATE OF IOWA
vs.
LOUIS STUTZ. } No. 71. Criminal.

In this cause the defendant, Louis Stutz, is fined 30 dollars and costs of suit.

It is therefore ordered and adjudged by the court that the defendant, Louis Stutz, pay the above fine of 30 dollars, and the costs taxed at $; and in default thereof stands committed to jail of Polk county, according to law.

And afterwards, to wit, on the same (28th) day of said July
15 term, 1864, the following was entered of record, to wit:

THE STATE OF IOWA
vs.
LOUIS STUTZ } No. 71. Criminal.

Now comes Finch & Ellwood, attorneys for defendant, and file bill of exceptions.

And afterwards, to wit, on the 12th day of August, 1864, being the 28th day of the July term of the district court, a bill of exceptions was filed herein, in words and figures following, to wit:

District court of Polk county, Iowa.

THE STATE OF IOWA
vs.
LOUIS STUTZ. }

Be it remembered, that the defendant in this action, at the January term of this court in the year 1864, was indicted for a nuisance in keeping intoxicating liquors, with intent to sell the same contrary to the provisions of the act of the legislature of this State, passed July 22d, 1855, entitled "An act for the suppression of intemperance," and the acts supplementary to, and amendatory thereto,
16 and confirmatory thereof, that on the 12th day of February, 1864, the defendant filed his plea of "not guilty" in writing, subject to the right to make motion to assail and attack or set aside the indictment herein, and that his plea, reserving right to attack the indictment for defects therein, is in the words and figures following, to wit:

Now comes the defendant and pleads "not guilty," subject to the right to withdraw his plea and assail the indictment, if assailable, when copy furnished.

And be it further remembered, that on the 12th day of the July term of the said district court for the year 1864, the said defendant herein filed his petition and motion for a change of venue, which petition and motion is in the words and figures following, to wit:

District court.

THE STATE OF IOWA }
vs. }
LOUIS STUTZ. }

To the district court of Polk county, Iowa:

The petition of Louis Stutz respectfully shows to this court that he is the defendant in the above-entitled action, that this prosecu-
17 tion is instituted against your petitioner, and he is indicted herein for the criminal offence of keeping a common nuisance That the indictment against the petitioner for said offence was found by the grand jury of said Polk county, and the said indictment and this action is now pending in the district court of said county. That he verily believes the judge of the fifth judicial district is prejudiced against him, and that owing to the prejudice of said judge of the said fifth judicial district, your petitioner cannot receive a fair and impartial trial in the said county of Polk, or in the fifth judicial district. Your petitioner therefore prays that the venue of this action may be changed from the fifth judicial district, as authorized by the statutes of this State in such cases made and provided. And your petitioner further shows that similar objections exist to the judge of the eleventh judicial district.

LOUIS STUTZ.

STATE OF IOWA, *Polk County, ss:*

I, Louis Stutz, being duly sworn, do state that the foregoing petition is true as I verily believe.

LOUIS STUTZ.

18 Subscribed and sworn to before me, by Louis Stutz, this 15th day of February, 1864.

[L. S.] GEO. N. CLARK,
Notary Public, Polk Co., Iowa.

That on the hearing of such motion for a change of venue, the court overruled the said motion and denied to defendant a change of venue, to which ruling of the court, denying such motion for change of venue, this defendant then and there excepted.

And be it further remembered, that at the said July term of said district court, on the 16th day of July, 1854, this defendant having

filed his answer subject to and reserving the right to assail the indictment for defects therein, or irregularities in finding the same as aforesaid, moved and asked leave and permission to file a motion to set aside the indictment against him in this action, on the ground that the grand jury which found the bill of indictment herein, "were not selected, drawn, summoned, and impanelled according to law." That the court overruled this motion of the defendant and refused the leave asked by defendant to file such motion to set aside
19 the indictment against him, and to this ruling of the court, overruling his motion and refusing and denying such leave, this defendant then and there excepted.

And be it further remembered, that on the 9th day of July, 1864, and before the trial of this action commenced, this defendant filed his challenge to the trial jurors, which said challenge is in the words and figures following, to wit:

District court of Polk county, July term, 1864.

STATE OF IOWA }
vs. }
LOUIS STUTZ. }

Now comes the defendant and challenges the panel of petit or trial jurors impanelled to try the issues of this term of the court, and moves to set aside the panel for the following reasons and upon the following grounds:

First. The jurors composing said panel were not selected, drawn, and summoned in the manner prescribed by the laws of this State.

Second. The clerk in selecting said jury did not apportion the number to be selected from the different townships of the county as provided and required by sec. 2,725 of the revision, nor de-
20 liver a statement thereof to the sheriff, as by said section required.

Third. The sheriff of the county did not cause the written notice to be delivered to one of the judges of election in the several townships, informing them of the number of jurors appointed to the respective townships as required by sec. 2,726 of the revision.

Fourth. The judges of election in the different townships of the county did not make the selection and return list of names to the county judge with the returns of election as required by section 2,727 of the revision; nor on their failure to make and return such list did the county canvassers, at their meeting to canvass the votes polled in said county, make such lists as provided by said sec. 2,727.

Fifth. The said jurors composing said panel were not drawn and summoned as provided and required by sections 2,730–'31–'32–'34 of the revision.

Sixth. None of the material requisites prescribed by chapter 115 of the revision of 1860, for the selection, drawing, and summoning of said jurors were observed or regarded in the selection, drawing, summoning, and return of said jury.

FINCH & ELLWOOD,
Att'ys for Defi.

21 That upon the trial of such challenge to the panel of the trial jurors the defendant called Jabob M. Laird, who testified as follows:

I am clerk of the district court of Polk county, Iowa, and was such clerk in the year 1863. I, as such clerk, apportioned the number of jurors, grand and petit, to be selected from each township in said county of Polk, as required and provided in section 2,725 of the revision for the year 1864. I can't say that I made such apportionment before the first Monday of September in that year. It may have been after that time. I did not deliver to the sheriff of Polk county a statement of such apportionment. After such apportionment I wrote and attached to the inside of the front cover to the poll books sent to the respective townships a direction to the trustees in writing, in substance as follows: "The trustees of township will send in with the poll books the names of persons to serve as grand and petit jurors for the year 1864.

"J. M. LAIRD, *Clerk.*"

22 The books provided for each township contained such a direction as that above given, and the direction intended for each township were filled up with the name of the township for which it was intended, and with the number of grand and number of petit jurors to be selected from such township. That the poll books for some of the townships containing the above and foregoing direction were delivered by me to the trustees, some were delivered to the sheriff of the county, and some to the township clerks of their respective townships. I can't say how many I delivered to the trustees, nor how many to the sheriff, nor how many to the clerks of the townships, nor can I designate what townships through the trustees received the poll books with such direction from me, nor for what townships I delivered the poll books to the sheriff, nor for what townships I delivered them to the township clerks.

Some of the poll books returned by township trustees do not contain the above written direction to the trustees of the township, to select jurors, and these I account for in this way: I delivered
23 to the trustees, or sheriff, or clerks for the several townships duplicates of the poll books for the respective townships, with directions to select jurors written in only one of the poll books for the township, and I suppose the trustees must have retained the poll books containing such directions, and returned the duplicate which does not contain them.

The poll books returned by the trustees of Delaware, Des Moines, Beaver, Lee, and Four-Mile townships, do not contain such written directions to the township trustees to select such jurors.

And from the further testimony and evidence of said Laird, and the poll books of the different townships of the county introduced as evidence on the hearing and trial of such challenge, the following facts appeared and were proved:

First. That from Delaware township in said county, no grand or petit (trial) jurors were selected by the judges of election of that

township for the year 1864. That no lists of persons to serve either as grand or petit jurors for that year (1864) were returned by the judges of election of said Delaware township to the county
24 judge as provided and required by section 2,727 of the revision of 1860, and that the county canvassers, at the meeting to canvass the votes polled in said county at the election held in 1863, did not make lists of the grand and petit jurors for the said Delaware township to serve as jurors for the year 1864, as provided by said section 2,727; although said Delaware township was delinquent in the selection of jurors for the same, and that no petit or trial jurors were selected or returned from said township for the year 1864, and no persons from that township were in the trial jury.

Second. That the poll books from the townships of Allen, Beaver, Bloomfield, Des Moines, Four-Mile, Franklin, Jefferson, Lee, Madison, Saylor, Valley, and Washington, in said county for the year 1863, returned by the respective election judges of said township to the county judge, the last leaf in said poll book, and upon which leaf nothing else was written, contained what purported to be lists of grand and petit jurors, but neither of said lists are certified by
25 the election judges of said townships respectively, or by any other person to be the lists of jurors selected by the election judges of said townships, that the names contained in said lists are the names of persons selected by such judges to serve as jurors for these townships respectively, nor is there any evidence that the names so purporting to be the names of grand and petit jurors were written or placed on the last leaf of said poll books as aforesaid by the judges of the election of the said respective townships or by their authority or direction, nor is there any certificate to show that the said persons named in such lists resided in the said townships or were inhabitants thereof.

Third. That the poll books of the election of 1863, returned by the judges of election in Douglas township in said county, did not in any way contain any lists of jurors for said township for the year 1864, either on the last leaf, or elsewhere. That in the poll book of said township there was found a slip of paper on which was indorsed names for grand and petit jurors, but said slip was in no way
26 certified by the judges of election of that township, nor was there any certificate of said township trustees upon or appended to the said slip or of any other person whatever certifying or indicating that the names on such slip were the names of persons selected to serve as such jurors, nor any certificate that the same was prepared by said township trustees of said township or by their direction, or that the persons therein named were selected by the judges of election to serve as jurors, or that the persons therein named resided in said Douglas township, nor that the handwriting of the trustees of said township, or that the same was prepared and placed in said book by their authority or direction, but such names on said slip were by the clerk adopted and included as jurors, grand and petit, from said township for the year 1864.

That the said challenge to the panel of trial jurors was heard by

the court upon the evidence of said J. M. Laird, above set forth, and upon the evidence of the poll books of the respective townships, showing the facts above set forth; that upon the trial of such challenge, the facts of the challenge above shown were *were* not al-
27 lowed by the court as a sufficient ground of challenge to said panel or trial jurors, and the court overruled said challenge, and directed the jury to be impanelled, and the jury were accordingly impanelled to try this action.

That to the decision of the court disallowing and overruling said challenge to the trial jurors and directing the said jury to be impanelled this defendant then and there excepted.

That the following is all the evidence given on the trial of this action:

THE STATE OF IOWA
vs.
LOUIS STUTZ.
} Trial July 19th, 1864.

Samuel Noel sworn:

Knows defendant, knows of his keeping a saloon; he kept one last fall in Stringham block, on Walnut street; now keeps on or near the corner of Walnut and Second streets.

When in Stringham block, he kept beer and I think brandy, but am not positive. I believe he was selling liquors there. I don't know how long he was keeping there. He went into the building
28 along in the winter. I have seen him sell liquors there two or three times. Defendant's saloon was in Des Moines, Polk co., Iowa.

Cross-ex:

I drank there either brandy or gin; I can't fix the date. It was some time along last winter. I cannot tell the month.

Re-ex'd:

I know it was before the finding of the indictment that he sold liquor there. I think I paid defendant for liquor I got there once or twice.

John Jack:

Know the defendant, Louis Stutz. Have known him a year or two. Last fall he kept saloon on Walnut street; kept lager beer and wine, and I suppose liquors. I think may be I got some liquor there. I was there a half dozen or a dozen times in all. I may have got whiskey there, but I would not like to swear to it. This was in this town and county.

Cross-ex'd:

It was beer mostly that I drank at Stutz. I think I have had liquor there, but I do not know that I paid for any liquor there. I don't know when money was paid there to my knowledge; it was paid for wine and beer, or for liquors. It was orderly and
29 quiet at Stutz when I was there. He had cider, lager beer,

and wine there. His main drink was lager beer. It was a lager beer saloon.

Re-ex'd:

I was recruiting when I went there to Stutz. I don't think it made any difference whether recruits were Germans or not.

John Morris sworn:

Says knows defendant. Last fall from August to February, I believe, he was keeping a saloon in Walnut street. I guess he kept a little of all sorts. I have got liquor there, but I can't tell when. It might have been before last term. I think it was. I don't know what kinds of liquor he kept there. I think I drank gin there once. I did not pay for it. I think the other man that was with me did pay for it.

Jacob Fink sworn:

Knows defendant Stutz. He kept a saloon in Stringham block. He kept liquors. I got some there myself. Saw him sell beer, and I think whiskey, some time during the last summer. I don't know when he left there.

Cross-ex'd:

Some time last summer I got some liquor at Stutz place. I did not pay for it. The man who was with me did. I drank whiskey. I could not say that Stutz was there.

X'd:

I don't know that Stutz owned the building. I can't say that he was present at the time; am not positive that he had a sign there. I have seen Stutz about there. I can't say that I ever saw him sell anything but beer in my life.

John Jack, recalled:

Says, I can't say who was proprietor of the premises. I can't say that he had a sign up. I can't say that I got any liquor of him. There was another man there, a German. I know that the other man did not get a license to sell beer, native wine, and refreshments, but Stutz did. I am not positive when I got the liquor.

Re-ex'd:

I have seen Stutz there acting in the premises.

That the State here rested the plaintiff's case and the defendant offered in evidence a license from the government of the United States to sell intoxicating liquors at retail, which said license is in the words and figures following, to wit:

No. 1,931.—*License.*

Granted July 1st, 1863; expires May 1st, 1864.

To all whom it may concern:

31 This license is granted to Louis Stutz, of the city of Des Moines, in the county of Polk and State of Iowa, to carry on the business or occupation of retail liquor dealer, at No. street, in the aforementioned county and State, he having paid the tax of sixteen and 67-100 dollars therefor, conformably to the provisions of an act entitled "An act to provide internal revenue to support the government and to pay interest on the public debt," approved July 1st, 1862. This license to be in force until the first day of May, 1864, provided that the said Louis Stutz shall conform to the requirements of said act and of such other acts as are now or may hereafter be in this behalf enacted.

Given under my hand and seal at Council Bluffs, this 17th day of September, A. D. 1863.

HORACE EVERETT,
Per A. NEWTON,
Dept. Collector of the 5th Collection District in the State of Iowa.

That the district attorney on behalf of the State then admitted that portions of the liquors had, and held, and kept by the defendant at the times of the several alleged sales mentioned by the
32 witnesses Samuel Noel, John Morris, John Jack, and Jacob Fink, and during the entire time he occupied the said building in Stringham block mentioned in the indictment herein, were imported liquors, upon the importation of which duties were paid to the government of the United States under the laws thereof, and such admission went and was given to the jury as evidence. That the foregoing evidence of Samuel Noel, John Jack, John Morris, and Jacob Fink, and the license of defendant from the United States, a copy of which is above set forth, and the admission of the district attorney above set forth, is all the evidence and proof given to the jury on the trial of this action.

And be it further remembered that on submitting this action to the jury, the defendant asked the court to charge the jury as follows:

First. That the laws of the State of Iowa declaring intoxicating liquors, and the sale thereof, a nuisance, and actually prohibiting the sale thereof, being the law under which the indictment herein was found, is in conflict with provisions of the Constitution of the United States, and therefore void.

Second. That the Constitution and laws of the United
33 States authorizing the importation and sale of intoxicating liquors, and the granting of licenses for the sale thereof, the law of this State, under which this indictment is found, is in conflict with the provisions of art. 4, sec. 2, of the Constitution of the United States, and also with the provisions of art. 6 of said instrument, and to the second clause or paragraph thereof.

Third. That the "act for the suppression of intemperance" passed

by the legislature of this State, and under which the indictment herein was found, so far as it declares liquors kept with intent to sell the same a nuisance, and authorizes the seizure and destruction thereof, whether domestic or imported liquors, is void, being in conflict with the provisions of the Constitution of the United States, and the laws thereof which authorize the importation and sale of intoxicating liquors, and grant licenses for the sale thereof, and also being in conflict with that portion of art. 5, amendments to the Constitution of the United States, which prohibits the taking of private property for public use without just compensation.

That the court declined or refused to give to the jury the
34 said instructions asked by defendant, or either or any of them, and to such refusal of the court to give said instructions, and each and every of them, the defendant then and there excepted.

And be it further remembered that after verdict and before judgment, and at this same July term, 1864, the said defendant filed his motion in arrest of judgment, and for a new trial in this action, in the words and figures following, to wit:

District court of Polk county, July term, 1864.

THE STATE OF IOWA }
vs. }
LOUIS STUTZ. }

Now comes the defendant herein, and moves the court in arrest of judgment, and for a new trial in this action on the following grounds:

First. The court erred in refusing to allow the defendant to make his motion to set aside the indictment, his answer having been filed subject to, and reserving such right.

Second. The court erred in overruling the defendant's motion for a change of venue.

Third. The court erred in overruling and deciding against the defendant his challenge to the panel of petit, or trial, jurors, and disallowing the same.

35 Fourth. The court erred in refusing to give to the jury the instructions asked by the defendant touching the unconstitutionality of the law under which the defendant is indicted and tried.

Fifth. The law under which defendant is indicted and convicted is at variance and in conflict with the Constitution of the United States or several provisions thereof.

Sixth. The State law under which defendant herein is indicted and convicted, being in conflict with the provisions of the Constitution of the United States, and the laws thereof, is void.

Seventh. The State law prohibiting the sale of intoxicating liquors, and declaring such liquors a nuisance, the defendant holding a license to sell the same from the United States, is in conflict with the Constitution and laws of the United States authorizing the importation and sale of liquors, and therefore void.

Eighth. The State law prohibiting the sale of intoxicating liquors and declaring the same a nuisance, and authorizing its destruction is

in conflict with sec. 2, art. 4, of the Constitution of the United States; and in conflict with the second clause or paragraph of art. 6 of the Constitution of the United States, and in conflict with that
36 part of art. 5, amendments to the Constitution, contained in the last paragraphs of said article, and in conflict with the provisions of the Constitution and laws of the United States which recognizes intoxicating liquors as property, and authorize the importation and sale thereof.

Ninth. That the "act for the suppression of intemperance" passed by the legislature of this State, and under which the indictment herein was found, so far as it declares liquors kept with intent to sell the same a nuisance, and authorizes the seizure and destruction thereof, whether domestic or imported liquors, is void, being in conflict with the provisions of the Constitution of the United States and the laws thereof, which authorize the importation and sale of intoxicating liquors, and grant licenses for the sale thereof, and also being in conflict with that portion of art. 5, amendments to the Constitution of the United States, which prohibits the taking of private property for public use without just compensation.

FINCH & ELLWOOD,
Att'ys for Def't.

That upon the hearing of said motion in arrest, and for a
37 new trial, the court overruled said motion, and denied a new trial, to which ruling of the court the defendant then and there excepted.

And inasmuch as the matters aforesaid do not appear of record herein, the defendant asks that the same be incorporated into his bill of exceptions, and make a part of the record herein, and it is so ordered by the court this 12th day of August and the 28th day of said July term.

(Signed) J. H. GRAY, *Judge.*

All right.

S. SIBLEY.

And afterwards, to wit, on the 10th day July, 1865, a notice of appeal was filed herein in words and figures following, to wit:

In the district court of Polk co., Iowa.

Notice of appeal from the judgment of the district court to the Supreme Court.

THE STATE OF IOWA
vs.
LOUIS STUTZ.

To the district attorney of the fifth judicial district, and the clerk of the district court of Polk county, Iowa:

38 You are hereby notified that the said defendant has appealed from the judgment of the district court of Polk county, Iowa, in the above-entitled cause, to the Supreme Court of the State of

Iowa, and the clerk of the district court of Polk county will therefore certify to the said supreme court for hearing at the next term thereof copies of the indictment, pleas of the defendant, all motions in the case, the motion for a new trial, the bill of exceptions, and all journal entries.

J. M. ELLWOOD and
FINCH, CLARK & RICE,
Att'ys for Def't.

We hereby accept due and legal service of the above notice on this 7th day of July, A. D. 1865.

H. W. MAXWELL.
District Attorney of the 5th Judicial District.
H. H. GRIFFITHS, *Clerk.*

39 STATE OF IOWA, *Polk County, ss:*

I, H. H. Griffiths, clerk of the district court of said county, hereby certify that the foregoing is a correct transcript of the indictment, all motions in the cause, all journal entries, the bill of exceptions, and notice of appeal in the above-entitled cause, as full as the same appear on record and file in office at Des Moines.

Witness my hand and the seal of the court hereto affixed, this 1st day of September, A. D. 1865.

[L. S.]

H. H. GRIFFITHS, *Clerk.*
By S. S. ETHRIDGE, *Deputy.*

[U. S. rev. 5 cts.]

Clerk's fees:

For transcript	$10	00
Certificate and seal and stamp		55
	10	55
Duplicate	10	00
Cert. and seal		55
	21	10

Paid by deft.

39½ Be it remembered, that at a supreme court of the State of Iowa, begun and held at the city of Des Moines, on Saturday, the 6th day of January, 1866—

Present: Hon. Geo. G. Wright, chief justice, Hon. Ralph P. Lowe, Hon. John F. Dillon, Hon. C. C. Cole, judges—

The following was entered of record in said court:

Appeal from Polk co.

THE STATE OF IOWA
against. } 2,307.
LOUIS STUTZ, app'lt.

Submitted on part of appellant.

And afterwards, to wit, on the 25th day of January, 1866—
Present: Hon. R. P. Lowe, chief justice, Hon. John F. Dillon, Hon. C. C. Cole, Hon. Geo. G. Wright, judges—
The following was entered of record, to wit:

Appeal from Polk co.

THE STATE OF IOWA
against } 2,307
LOUIS STUTZ, app'lt.

This day this cause coming on for hearing, was submitted to the consideration of the court on printed and written argument of counsel.

40 And afterwards, to wit, on the 1st day of February, 1866, the following was entered of record to wit:

Appeal from Polk county.

THE STATE OF IOWA
against } 2,307.
LOUIS STUTZ, app'lt.

This day, this cause coming on for hearing, was submitted to the consideration of the court, and the court being now sufficiently advised in the premises, find that there is no error in the judgment of the court below, and file their written opinion.

It is therefore considered by the court that the judgment of the court below be affirmed, and that the State of Iowa have and recover of and from the appellant, Louis Stutz, the sum of ten dollars as a fine, and the costs of the court below, taxed at $, and the costs of this court, taxed at $, and that execution issue therefor, and that the appellant, Louis Stutz, stand committed to the county jail of Polk county until said fine and costs are fully paid, and that a certified copy of this judgment shall be furnished the sheriff of Polk county by the clerk of this court, which shall be his sufficient warrant to arrest and commit the said Louis Stutz to the county jail of
41 Polk county, and to stand so committed in accordance with this judgment. And the said Louis Stutz being three times called to respond to this judgment, comes not but makes default. It is therefore ordered and adjudged that default be entered in favor of the State of Iowa, and against the said defendant and the undertaking of , the bail in this cause, is forfeited.

And afterwards, to wit, on the 5th day of February, 1866, the following was entered of record, to wit:

Appeal from Polk co.

THE STATE OF IOWA
against
LOUIS STUTZ, app'lt. } 2,307.

In this case it is ordered that the bond on writ of error to Supreme Court U. S. be in the penal sum of $300, with sureties to be approved by the clerk of this court.

42 STATE OF IOWA, *Supreme Court:*

I, Lewis Kinsey, clerk of the supreme court, do hereby certify that the foregoing, contained on pages 39 to 41, inclusive, is a full, true, and complete copy of all the journal entries in the supreme court of Iowa, in the cause entitled The State of Iowa *vs.* Louis Stutz, appealed from the district court of Polk county, Iowa, as full, true, and complete as the same now appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 16th day of Novembar, 1866.

[L. S.] LEWIS KINSEY, *Clerk.*

[5-c. in. rev. stamp, cancelled.]

43 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judgesof the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State of Iowa, before you, between the State of Iowa and Louis Stutz, manifest error hath happened to the great damage of the said Louis Stutz, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States
44 should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this sixth day of February, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the 90th.

[L. S.] W. G. WOODWARD,
Clerk of the United States Circuit Court for the District of Iowa.
By J. BAUSMAN, *Dep'ty.*

[50-cent int. rev. stamp.]

The within writ of error allowed, this sixth day of February, A. D. 1866.

R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

Filed Feb'y 6, '66.

L. KINSEY, *Cl'k.*

45 Supreme court of the State of Iowa.

THE STATE OF IOWA
vs.
LOUIS STUTZ.

I, the undersigned, chief justice of the supreme court of the State of Iowa, do hereby certify that in the above-entitled cause and upon the hearing and decision thereof in this court, there was drawn in question the validity of the statute of the State of Iowa, entitled "An act for the suppression of intemperance," passed by the general assembly of said State, and which took effect July 1, 1855; and especially the validity of the 8th section of said act, on the ground that the said act, and especially the 8th section thereof, were repugnant to, and in conflict with, the Constitution and laws of the United States, and that the decision of the court was in favor of the validity of said statute and of the 8th section thereof.

And I do also further certify that in the above-entitled cause and on the hearing and decision thereof in this court, there was drawn in question the validity of the right, privilege, and authority of the defendant, Louis Stutz, to sell intoxicating liquors, either im-

46 ported or domestic, and to keep the same with intent to sell under a license so to do granted to him by the government of the United States, pursuant to, and in compliance with, the provisions of the act of Congress, entitled "An act to provide internal revenue to support the government and to pay interest on the public debt," approved July 1, 1862; and that the decision of the court was against the validity of such right, privilege, or authority under such license.

And I further certify that the said supreme court of the State of Iowa have ordered this certificate to be made a part of the record of the above-entitled cause.

In witness whereof I have hereto set my hand and caused the seal of the supreme court of the said State to be affixed, at Des Moines, in said State, this 6th day of Feb'y, 1866.

[L. S.] R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

47 STATE OF IOWA, *Supreme Court:*

I, Lewis Kinsey, clerk of the supreme court of the State of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the transcript filed in said supreme court, in the cause entitled the State of Iowa *vs.* Louis Stutz as full, true, and

complete as the original now remains on file in my office. I further certify that I have hereto attached the writ of error in said cause, directed to the judges of the supreme court of the State of Iowa, and also the certificate of the chief justice of said court.

In witness whereof I have hereunto set my hand and affixed the seal of said court. Done at Des Moines, Iowa, this 25th day of October, A. D. 1866.

[L. S.] LEWIS KINSEY, *Clerk.*

5-c. in. rev. stamp, cancelled.]